

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA, et al.,

Plaintiffs,

v.

COUNCIL ON ENVIRONMENTAL
QUALITY, and BRENDA MALLORY, in her
official capacity as Chair,

Defendants,

Case No. 1:24-cv-00089-DMT-CRH

ALASKA COMMUNITY ACTION ON
TOXICS; CENTER FOR BIOLOGICAL
DIVERSITY; CENTER FOR
ENVIRONMENTAL HEALTH; CENTER FOR
FOOD SAFETY; ENVIRONMENTAL LAW
AND POLICY CENTER; ENVIRONMENTAL
PROTECTION INFORMATION CENTER;
FOOD & WATER WATCH; FORT
BERTHOLD POWER; FRIENDS OF THE
EARTH; GREEN LATINOS; LABOR
COUNCIL ON LATIN AMERICAN
ADVANCEMENT; MĀLAMA MĀKUA;
NATIONAL PARKS CONSERVATION
ASSOCIATION; NATIONAL WILDLIFE
FEDERATION; OCEAN CONSERVANCY;
PEOPLE’S COLLECTIVE FOR
ENVIRONMENTAL JUSTICE; RIO GRANDE
INTERNATIONAL STUDY CENTER;
SOUTHERN UTAH WILDERNESS
ALLIANCE; WE ACT FOR
ENVIRONMENTAL JUSTICE; THE
WILDERNESS SOCIETY, and WINTER
WILDLANDS ALLIANCE,

Intervenor-Defendants.

**ANSWER OF INTERVENOR-DEFENDANTS ALASKA COMMUNITY
ACTION ON TOXICS, ET AL.**

Defendant-Intervenors Alaska Community Action on Toxics et al. hereby respectfully submit this Answer to the amended Complaint in this case filed June 4, 2024. The numbered paragraphs below correspond to the numbered paragraphs in the complaint. Intervenors deny each and every allegation in the Amended Complaint, including allegations contained in headings and subheadings, that is not specifically admitted in this answer.

NATURE OF THE ACTION

1. Intervenors admit the first sentence of this paragraph and admit that the Final Rule was issued on May 1, 2024, and deny in the remainder of this paragraph.

2. The allegations in this paragraph constitute Plaintiffs' characterization of NEPA, to which no response is required. To the extent a response is required, Intervenors deny.

3. The allegations in this paragraph constitute Plaintiffs' characterization of the Final Rule, to which no response is required. To the extent a response is required, Intervenors deny.

4. Denied.

5. The allegations in this paragraph constitute Plaintiffs' characterization of the Final Rule, to which no response is required. To the extent a response is required, Intervenors deny.

6. The allegations in this paragraph constitute Plaintiffs' characterization of the Final Rule, to which no response is required. To the extent a response is required, Intervenors deny.

7. Intervenors admit the first and third sentences of this paragraph. The remaining sentences constitute Plaintiffs' characterization of their interests, to which no response is required. To the extent a response is required, Intervenors deny.

8. Intervenors admit that the previous administration issued a rule that significantly changed long-standing regulations governing NEPA reviews, but deny the characterization of such rule.

9. Intervenor's admit that Congress amended NEPA via the Fiscal Responsibility Act of 2023 and deny plaintiffs' characterization of that legislation.

10. Denied.

11. Denied.

12. This paragraph characterizes the relief Plaintiffs seek, to which no response is required. To the extent a response is required, Intervenor's deny that Plaintiffs are entitled to any relief at all.

JURISDICTION AND VENUE

13. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor's deny.

14. Admit.

15. Intervenor's lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

16. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor's deny.

PARTIES

17. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor's deny.

18. Intervenor's lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

19. Intervenor's lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

20. Intervenor's lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

21. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

22. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

23. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

24. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

25. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

26. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

27. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

28. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

29. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

30. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

31. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

32. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

33. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

34. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

35. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

36. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

37. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

38. Admit.

39. Admit.

STATUTORY BACKGROUND

THE NATIONAL ENVIRONMENTAL POLICY ACT

40. Admit.

41. The allegations in this paragraph constitute Plaintiffs' characterization of NEPA, to which no response is required. To the extent a response is required, Intervenor deny.

THE ADMINISTRATIVE PROCEDURE ACT

42. Admit.

43. Admit.

44. This paragraph constitutes legal argument to which no response is required. To the extent a response is required, Intervenor deny.

REGULATORY BACKGROUND AND FACTUAL ALLEGATIONS

45. Admit.

46. Admit.

47. Denied.

THE 2020 REGULATIONS

48. Admit.

49. The allegations in this paragraph constitute plaintiffs' characterization of the 2020 rule, to which no response is required. To the extent a response is required, Intervenor deny.

50. Denied.

THE 2022 PHASE I NEPA REGULATIONS

51. The allegations in this paragraph constitute Plaintiffs' characterization of EO 13990, to which no response is required. To the extent a response is required, Intervenor deny.

52. The allegations in this paragraph constitute Plaintiffs' characterization of EO 13990, to which no response is required. To the extent a response is required, Intervenor deny.

53. Intervenor admit that the Council issued a Phase I rule on April 20, 2022, and deny the remaining allegations in this paragraph.

54. Admit.

THE FINAL RULE

55. Admit.

56. Admit, but deny the characterization of the scope of the rules as "even broader."

57. Denied.

58. The allegations in this paragraph constitute Plaintiffs' characterization of the Phase II rule, to which no response is required. To the extent a response is required, Intervenor deny.

59. The allegations in this paragraph constitute Plaintiffs' characterization of the Phase II rule, to which no response is required. To the extent a response is required, Intervenor deny.

60. Intervenor deny lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny

61. Denied.

62. Intervenor deny lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

63. Intervenor deny lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

64. Intervenor deny lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

65. Intervenor deny lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

66. Intervenor deny lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

67. Intervenor deny lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

68. Intervenor deny lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

69. Intervenor deny lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

70. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

71. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

72. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

73. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

74. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

75. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

76. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny.

77. The allegations in this paragraph constitute Plaintiffs' characterization of the Phase II rule, to which no response is required. To the extent a response is required, Intervenor deny.

CLAIMS FOR RELIEF

COUNT ONE: VIOLATION OF NEPA AND APA

78. Intervenor incorporate by reference their responses to the preceding paragraphs.

79. Admit.

80. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor deny.

81. The allegations in this paragraph purport to characterize the final rule and make legal argument and require no response. To the extent a response is required, Intervenor deny.

82. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor deny.

83. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor deny.

84. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor deny.

85. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor deny.

86. Denied.

COUNT TWO: VIOLATION OF THE APA

87. Intervenor incorporate by reference their responses to the preceding paragraphs.

88. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor deny.

89. Denied.

90. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor deny.

91. Denied.

92. Intervenor admit that the cited language appears in 40 C.F.R. § 1500.3(b) (2024) and deny the remainder of this paragraph.

93. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor deny.

94. Intervenor admit the first sentence and deny the remainder of this paragraph.

COUNT THREE: VIOLATION OF NEPA

95. Intervenor incorporate by reference their responses to the preceding paragraphs.

96. Intervenor admit that the Council prepared an Environmental Assessment and Finding of No Significant Impact for the Final Rule and deny the remainder of this paragraph.

97. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor deny.

98. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor deny.

99. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor deny.

COUNT FOUR: MAJOR QUESTIONS DOCTRINE.

100. Intervenor incorporate by reference their responses to the preceding paragraphs.

101. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor deny.

102. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor deny.

103. Denied.

104. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor deny.

105. The allegations in this paragraph are legal arguments that require no response. To the extent a response is required, Intervenor deny.

PRAYER FOR RELIEF

Intervenors deny any allegation that is not specifically admitted in this Answer and deny that Plaintiffs are entitled to any relief whatsoever, including the relief requested in its Amended Complaint.

AFFIRMATIVE DEFENSES

- 106. Plaintiffs have not exhausted all remedies.
- 107. This Court lacks jurisdiction to hear some or all of plaintiffs' claims.
- 108. Some or all of plaintiffs' claims fail to state a claim for which relief can be granted.
- 109. Plaintiffs have not filed this case in a proper venue.
- 110. Plaintiffs have not effectuated adequate service.

WHEREFORE, Intervenors respectfully request that the Court dismiss the Amended Complaint with prejudice, enter judgment in favor of Intervenors, and grant such relief as the Court deems just and proper.

DATED this 5th day of August, 2024.

s/ Jan E. Hasselman
JAN E. HASSELMAN (Admitted in D.N.D.)
(WSBA #29017)
KRISTEN L. BOYLES (Admitted in D.N.D.)
(CSBA #158450)
LYDIA HEYE (Admitted in D.N.D.)
(ABA #2211101)
EARTHJUSTICE
810 Third Avenue, Suite 610
Seattle, WA 98104
(206) 343-7340
jhasselman@earthjustice.org
kboyles@earthjustice.org
lhey@earthjustice.org

SUSAN JANE M. BROWN

[Admitted Pro Hac Vice]

(OSBA #054607)

SILVIX RESOURCES

4107 NE Couch St.

Portland, OR 97232

(503) 680-5513

sjb@silvex.org

*Attorneys for Intervenor-Defendants Alaska
Community Action on Toxics, et al.*

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

Dated: August 5, 2024.

s/ Jan E. Hasselman
Jan E. Hasselman